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OFFICE OF PETITIONS

In re Application of	:	
Rinerson et al.	:	
Application No. 10/612733	:	DECISION ON APPLICATION
Filed: 07/01/2003	:	FOR PATENT TERM ADJUSTMENT
Patent No. 7,079,442	:	AND
Issued: 07/18/2006	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number:	:	CERTIFICATE OF CORRECTION
UNTYP015	:	

This is a decision on the "Application for patent Term Adjustment Under 37 CFR § 1.705(d)", filed July 18, 2006. Patentee requests that the revised patent term adjustment indicated on the face of the patent be corrected from two hundred seventy (270) days to three hundred fifteen (315) days.

The application for patent term adjustment is **GRANTED to the extent indicated herein.**

Patentee is given **two (2) months** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred seventy-one (271) days.

On July 18, 2006, the above-identified application matured into U.S. Patent No. 7,079,442. The patent issued with a PTA of two hundred seventy (270) days. The instant request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent.

The Office should have determined a patent term adjustment of two hundred seventy-one (271) days based on the following:

<u>Delay</u>	<u>Code Section</u>	<u>Days</u>
PTO:	37 C.F.R. § 1.702(a)(4)	66 (Patent issued after 4 months of issue fee payment)
PTO:	37 C.F.R. § 1.702(a)(1)	366 (Over 14 months to issue first Office action)
Total		432

Given the overlapping periods of applicant delay discussed below,

Applicant:	37 C.F.R. § 1.704(c)(3)	41 (payment of issue fee on revival of application)
Applicant:	37 C.F.R. § 1.704(c)(10)	76 (filing of 312 amendment after allowance)
Applicant:	37 C.F.R. § 1.704(c)(10)	44 (filing 1.48 request/declaration after allowance)
Total		162

The present petition

Patentee notes that an Amendment under 37 CFR 312 including a supplemental declaration and correction of inventorship under 37 CFR 1.48 were filed January 13, 2006, and notes that a response to the amendment was mailed 76 days later, on March 29, 2006. As such, Patentee does not dispute the adjustment of 76 days. (Emphasis supplied).

Patentee asserts that the period of Applicant delay for failure to timely pay the issue fee should run from December 3, 2005 (the day the application became abandoned) to January 30, 2006 (the date the petition to revive the application for failure to timely pay the issue fee was granted), or 59 days, and that this period overlaps the above reduction (beginning January 13, 2006 with the filing of the amendment), and ending January 30, 2006 (with the granting of the petition to revive). As such, Patentee asserts, the total period of adjustment should be calculated from December 3, 2005 to January 12, 2006, which is 41 days.

37 CFR § 1.704(c)(3) provides that:

Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

- (i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or
- (ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed; (Emphasis supplied)

Patentee is correct that the period of reduction under 37 CFR 1.704(c)(3), considering the overlap with the period of reduction under 1.704(c)(10), is 41 days not 42 days. The Office should not have calculated this period of reduction as 42 days under 37 CFR 1.704(b). This period of reduction has been corrected from 42 days to 41 days.

However, with respect to calculation of the reduction under 1.704(c)(10), patentee is incorrect.

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

Patentee filed an amendment on January 13, 2006, which the Examiner responded to on March 29, 2006. As such, the Applicant delay was 76 days for filing the 312 amendment. Patentee also filed a request under 37 CFR 1.48 and Supplemental oath/declaration on January 13, 2006, which was not responded to by the Examiner. As such, the Applicant delay was four months (120 days) for filing the request under 37 CFR 1.48 and Supplemental oath/declaration, which, removing overlap, was reduced to 44 days.

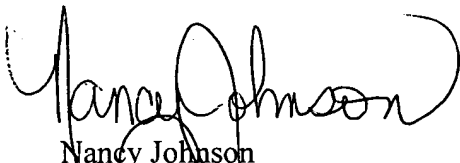
The period of reduction for Applicant's delay is correctly calculated as $41+76+44$ days, or one hundred sixty-one (161) days.

In view thereof, it is concluded that the patent should have issued with a revised Patent Term Adjustment of two hundred seventy-one (271) days (432 days of Office delay reduced by 161 days of applicant delay).

Receipt is acknowledged of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred seventy-one (271) days.

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,079,442 B2

DATED : July 18, 2006

INVENTOR(S) : Rinerson et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (270) days

Delete the phrase "by 270 days" and insert – by 271 days--